attornment by the authority to the plaintiffs of the goods. In our opinion the question whether or not there is an attornment is a question of fact and in the present case it is implicit from the trial judge's findings of fact that he was of the opinion that there had been no attornment. We are of the same opinion.

It follows that when the 32 cases were stolen from Godown K where they were eventually stored, these goods were in the custody or control of the authority for the purpose of delivery and the authority by virtue of the provisions of section 88 are absolved from liability for the loss caused to the plaintiffs.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *G. Murugaiyan; Rodyk & Davidson.*

PHUAH JEE SUAN v. NILA VASU PILLAI

[O.C.J. (Wee Chong Jin C.J.) March 17, 1972]

[Singapore — Suit No. 2082 of 1970]

Damages — Personal injuries — Quantum — Assessment — Whether court may add 20% to award owing to increase in cost of living — Whether there is a discernible trend of a 20% increase in awards.

The plaintiff suffered multiple injuries as a result of a road accident. Although the defendant entered appearance, no defence was filed as negligence was admitted. Thereupon the plaintiff entered judgment for damages to be assessed. In the event the deputy registrar awarded general damages at $24,000 plus 20% *i.e.* $28,800. and it was common ground that the 20% represented his acceptance of a submission made by counsel for the plaintiff that recently the High Court has made awards which represented an increase of 20% as compared to awards for comparable injuries made in earlier years and that a discernible trend of a 20% increase in awards could be seen from recent awards of the court. On appeal,

Held: (1) the basis adopted by the deputy registrar in assessing general damages was wrong in principle. The well known and long established principles which govern a court in assessing general damages for injuries sustained by a plaintiff arising out of the negligence of a defendant are still applicable and they do not permit a court to arrive at an amount it would award and then to add a percentage increase on to it because of, say, an increase in the cost of living;

(2) in this case general damages of $24,000 as estimated by the deputy registrar was not so inadequate as to justify the court to interfere with it.

[Editorial Note: See also the decision of the Federal Court of Malaysia in *Mahamad bin Mahamad Said* v. *Perianayagam* [1972] 1 M.L.J. 67 and a comment thereon at p. xxix.]

CIVIL SUIT.

H. E. Cashin for the plaintiff.

Yap Tyou Min for the defendant.

Wee Chong Jin C.J.: The plaintiff, a pedestrian, was run into and knocked down by a lorry driven by the defendant and suffered injuries. She sued the defendant for damages. Although the defendant entered an appearance, no defence was filed as negligence was admitted. Thereupon the plaintiff entered judgment for damages to be assessed.

The hearing on the question of damages came before the Deputy Registrar who, after hearing the evidence of the plaintiff and a specialist doctor, assessed the "general damages at $24,000 plus 20% (28,800)" and the special damages at $1,100. The defendant appealed against the Deputy Registrar's assessment of the general damages.

The facts before the Deputy Registrar were these. The plaintiff at the date of the accident was a student at the University of Singapore. The injuries she sustained as a result of the accident were the following: —

1) Extensive abrasion at the back, multiple scattered abrasions over Lt. cheek, Lt. chest, abdomen, Lt. upper arm and Lt. leg;
2) two lacerations each 1" long over the Lt. forehead and Lt. eyelid;
3) haematoma 2" diameter over Lt. side of occiput;
4) lacerations of Rt. and Lt. lobes of liver with 500 c.c. of blood in the peritoneal cavity;
5) fractures of 3rd and 4th ribs on the Rt. side and 1st, 6th, 7th, 8th and 9th ribs on the Lt. side. Both clavicles were also fractured;
6) Lt. haemothorax which was treated by aspiration.

She was in hospital from 1st to 22nd October 1969 and according to a medical report dated 15th June 1970 of the specialist who gave evidence before the deputy registrar, she had "a stormy convalescence" but made a remarkable recovery from the extensive injuries she sustained. At the date of this report she complained of numbness of her forehead, itchiness over the scars of her right shoulder and abdomen and prominence of her fractured clavicles and the report went on to say that the numbness over the forehead would be permanent, the prominence of the fractured clavicles would be permanent and the itchiness over the scars of her abdomen and right shoulder was due to keloid formations which though unsightly should not be operated upon as they would be likely to recur after surgery.

While in hospital she was operated on every night to suture lacerations and the haemothorax had to be aspirated four times. The plaintiff who used to go water-skiing before the accident cannot now wear a netted costume as the abdominal scars would show. She has a permanent lump on the forehead with a scar which hurts when the teeth of a comb touches it.

Counsel for the plaintiff submitted before the deputy registrar that the injuries should be assessed separately and that a proper assessment for the fractures of the ribs should be $7,000, for the clavicles $3,000 to $4,000, for the head injury $1,000 to $1,500, for the liver injury $4,000, for the haemothorax $2,000 to $3,000 and for the residual scars $8,000 to $10,000.

In the event the deputy registrar, as earlier stated, awarded general damages at $24,000 plus 20% *i.e.* $28,800 and it is common ground that the 20% re-

presented his acceptance of a submission made by counsel for the plaintiff that recently the High Court has made awards which represent an increase, generally speaking, of 20% as compared to awards for comparable injuries made in earlier years and that a discernible trend of a 20% increase in awards can be seen from recent awards of the High Court.

In my judgment the deputy registrar was wrong in principle in assessing damages on that basis. The well known and long established principles which govern a court in assessing general damages for injuries sustained by a plaintiff arising out of the negligence of a defendant are still applicable and they do not permit a court to arrive at an amount it would award and then to add a percentage increase on to it because of, say, an increase in the cost of living.

In the present case, in my judgment the deputy registrar has indicated that for all the injuries sustained by the plaintiff the sum of $24,000 would be his estimate of the general damages and I am unable to say that this sum is so inadequate as to justify this court, in its appellate capacity to interfere with it. I therefore dismissed the appeal.

Order accordingly.

Solicitors: *Murphy & Dunbar; Battenberg & Talma.*

MALAYSIAN REPORTS

WONG SIAK FON v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.) June 28, 1971]

[Kota Kinabalu — Criminal Appeal No. 4 of 1971]

Criminal Law and Procedure — Appeal — Conviction on accused's own plea — No right of appeal — Court's power of revision — Sabah Criminal Procedure Code, 1959, s. 254.

Penal Code (Sabah), s. 420 — Cheating — Charge — Ingredients — Failure to particularise — Effect of.

This was an appeal against conviction and sentence.

The appellant was originally charged with the offence of promoting a collection of money in two kampongs without a licence, contrary to section 3(2) of the Public Collection Ordinance (Chapter 112). Before the close of the case for the prosecution the charge was amended to one of cheating by dishonestly inducing the delivery of an amount in cash, an offence punishable under section 420 of the Penal Code of Sabah.

The appellant pleaded guilty to this amended charge as a result of which he was convicted on his own plea and sentenced to three months imprisonment. He appealed and contended that as the charge was illegal, the conviction and sentence were null and void and that the evidence disclosed no offence in law and that there was no real plea of guilty. The respondent contended that since the appellant was convicted on his own plea he was precluded from appealing against his conviction. However, the charge was badly drafted in that it did not disclose the names of the persons cheated nor did it disclose particulars of deception.

Held: (1) under section 254 of the Sabah Criminal Procedure Code a person who was convicted on his own plea cannot appeal against his conviction as of right so long as his plea was a real plea;

(2) although the appellant had no right of appeal against his conviction the appellate court is entitled to look into the record and if there is any irregularity which occasions a failure of justice, the court will exercise its power of revision. In the circumstances of this case, the cheating charge did not particularise the deception. This was an irregularity which affected the legality of the conviction resulting in the failure of justice. Therefore in the exercise of the court's power of revision under section 282 of the Sabah Criminal Procedure Code, the conviction must be quashed and the sentence set aside.

Observations on ingredients of a cheating charge.

Per curiam: Section 305 of the Criminal Procedure Code of the Federated Malay States provides that where an accused has been convicted on his own plea there shall be no appeal except as to the extent or the legality of sentence. This section is similar to section 299 of the Straits Settlements Criminal Procedure Code and section 234 of the Singapore Criminal Procedure Code (Cap. 113, 1970 Edn.). There is no similar provision in East Malaysia (*Post* p. 204 I *l*).

[Editorial note: In *Lee Kang Wye* v. *Ng Ah Min* (1888) 4 Ky. 335. it was held that before there can be a conviction for cheating under section 417 of the Penal Code, there must be conclusive evidence of a dishonest intent at the time of obtaining the money or goods; where the evidence does not necessarily shew a dishonest intent at the time, but is consistent with such either being or not being the fact, no conviction can be had. This case was followed in *Yong Yong Peng* v. *R.* [1947] M.L.J. 40.]

Cases referred to:-

(1) *Tan Thian Sang alias Tan Yun Guan* v. *Public Prosecutor* [1959] S.C.R. 5.

(2) *Lee Yu Fah* v. *Public Prosecutor* [1937] M.L.J. 179.

(3) *Public Prosecutor* v. *Hussain & Anor.* [1970] 1 M.L.J. 37.